**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

*EN BANC*

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

-versus-

**RCD REALTY MARKETING CORP.,**
Respondent.

**CTA EB No. 1136**
**(CTA Case No. 8271)**

Present:
Del Rosario, *PJ*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Cotangco-Manalastas, and
Ringpis-Liban, *JJ.*

Promulgated:

JUN 01 2016 2:20 p.m.

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**RESOLUTION**

**CASTAÑEDA, JR., *J.***

This resolves the Motion for Reconsideration[1] filed by the Commissioner of Internal Revenue (CIR) on February 3, 2016 with respondent's Comment (To Petitioner's Motion for Reconsideration dated February 2, 2016)[2] filed on March 31, 2016. CIR prays that the Decision promulgated on January 7, 2016 be reversed and set aside.

The dispositive portion of the Decision dated January 7, 2016 states:

> **WHEREFORE,** premises considered, the petition is **DENIED** for lack of merit. The November 18, 2013 Decision and February 24, 2014 Resolution of the CTA Special First Division in CTA Case No.8271 are **AFFIRMED.**

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[1] *Rollo*, pp. 451- 459.
[2] *Rollo*, pp. 464 -474.

**SO ORDERED.**

CIR argues that the presentation of the respondent's Quarterly Income Tax Returns for the year 2009 is vital; that respondent failed to present the necessary documents whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income in the income tax return; and that the proof of actual remittance to the BIR of the withheld taxes and testimonial evidence of the payors and withholding agents are required.

In its Comment, respondent counter-argues that the arguments are without factual and legal basis, among others, and in fact, the arguments are mere rehash of the matters already resolved by this Court.

After a careful review of the grounds raised by CIR in this motion, this Court finds that these are mere reiterations of the arguments in the Petition for Review, which were already exhaustively discussed in the January 7, 2016 Decision.

In this case, respondent was able to establish its entitlement to the refund of its excess/unutilized creditable withholding taxes by complying with the following requisites:

1. The claim for refund was filed within the two-year prescriptive period as provided under Section 204 (C) in relation to Section 229 of the NIRC of 1997, as amended;

2. The fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom;

3. That the income upon which the taxes were withheld was included in the return of the recipient.

Accordingly, We maintain our findings and conclusion in the January 7, 2016 Decision that the respondent is entitled to the refund of its excess creditable taxes withheld at source for the year 2008 in the reduced amount of P3,696,086.43. There is no valid or cogent reason to deviate from our findings and conclusions reached in the said Decision, thus, the motion is denied.

**WHEREFORE,** premises considered, the Motion for Reconsideration of the Decision dated January 7, 2016 filed by the Commissioner of Internal Revenue is **DENIED** for lack of merit.

**SO ORDERED.**

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**WE CONCUR:**

**ROMAN G. DEL ROSARIO**
Presiding Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

(On Leave)
**CIELITO N. MINDARO-GRULLA**
Associate Justice

**(On Official Business)**
**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

**(On Official Business)**
**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice